

Introduced by Senator Speier

February 19, 1999

An act to amend Section 243 of the Penal Code, relating to the crime of battery.

LEGISLATIVE COUNSEL'S DIGEST

SB 563, as introduced, Speier. Battery: domestic partners.

Under existing law, any person who commits a battery is punishable by a fine not exceeding \$2,000, or by imprisonment in a county jail not exceeding 6 months, or by both that fine and imprisonment. Any person who commits a battery against a person where serious bodily injury is inflicted, is punishable by imprisonment in a county jail not exceeding one year or by imprisonment in the state prison for 2, 3, or 4 years. Any person who commits a battery against a person with a specified domestic relationship to the batterer is punishable by imprisonment in a county jail not exceeding one year, or by fine not exceeding \$2,000, or by both that fine and imprisonment.

This bill would increase the punishment for a battery committed against a person with a specified relationship to the batterer, if the conviction for that battery occurs within 7 years of 2 or more prior convictions for specified offenses committed against a person with a specified relationship to the batterer. That increased punishment would be imprisonment in a county jail for not more than one year or by a fine of \$5,000, or by both that fine and punishment, or by imprisonment in the state prison for 16 months, or 2 or 3 years. By increasing the penalty of an offense from a misdemeanor



to a felony, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 243 of the Penal Code is
2 amended to read:

3 243. (a) A battery is punishable by a fine of not
4 exceeding two thousand dollars (\$2,000), or by
5 imprisonment in a county jail not exceeding six months,
6 or by both the fine and imprisonment.

7 (b) When a battery is committed against the person of
8 a peace officer, custodial officer, firefighter, emergency
9 medical technician, lifeguard, process server, traffic
10 officer, or animal control officer engaged in the
11 performance of his or her duties, whether on or off duty,
12 including when the peace officer is in a police uniform
13 and is concurrently performing the duties required of
14 him or her as a peace officer while also employed in a
15 private capacity as a part-time or casual private security
16 guard or patrolman, or a physician or nurse engaged in
17 rendering emergency medical care outside a hospital,
18 clinic, or other health care facility, and the person
19 committing the offense knows or reasonably should know
20 that the victim is a peace officer, custodial officer,
21 firefighter, emergency medical technician, lifeguard,
22 process server, traffic officer, or animal control officer
23 engaged in the performance of his or her duties, or a
24 physician or nurse engaged in rendering emergency
25 medical care, the battery is punishable by a fine not
26 exceeding two thousand dollars (\$2,000), or by



1 imprisonment in a county jail not exceeding one year, or
2 by both the fine and imprisonment.

3 (c) (1) When a battery is committed against a
4 custodial officer, firefighter, emergency medical
5 technician, lifeguard, process server, traffic officer, or
6 animal control officer engaged in the performance of his
7 or her duties, whether on or off duty or a physician or
8 nurse engaged in rendering emergency medical care
9 outside a hospital, clinic, or other health care facility, and
10 the person committing the offense knows or reasonably
11 should know that the victim is a custodial officer,
12 firefighter, emergency medical technician, lifeguard,
13 process server, traffic officer, or animal control officer
14 engaged in the performance of his or her duties, or a
15 physician or nurse engaged in rendering emergency
16 medical care, and an injury is inflicted on that victim, the
17 battery is punishable by a fine of not more than two
18 thousand dollars (\$2,000), by imprisonment in a county
19 jail not exceeding one year, or by both the fine and
20 imprisonment, or by imprisonment in the state prison for
21 16 months, or two or three years.

22 (2) When the battery specified in paragraph (1) is
23 committed against a peace officer engaged in the
24 performance of his or her duties, whether on or off duty,
25 including when the peace officer is in a police uniform
26 and is concurrently performing the duties required of
27 him or her as a peace officer while also employed in a
28 private capacity as a part-time or casual private security
29 guard or patrolman and the person committing the
30 offense knows or reasonably should know that the victim
31 is a peace officer engaged in the performance of his or her
32 duties, the battery is punishable by a fine of not more than
33 ten thousand dollars (\$10,000), or by imprisonment in a
34 county jail not exceeding one year or in the state prison
35 for 16 months, or two or three years, or by both that fine
36 and imprisonment.

37 (d) When a battery is committed against any person
38 and serious bodily injury is inflicted on the person, the
39 battery is punishable by imprisonment in a county jail not

1 exceeding one year or imprisonment in the state prison
2 for two, three, or four years.

3 (e) (1) When a battery is committed against a spouse,
4 a person with whom the defendant is cohabiting, a person
5 who is the parent of the defendant's child, former spouse,
6 fiancé, or fiancée, or a person with whom the defendant
7 currently has, or has previously had, a dating or
8 engagement relationship, the battery is punishable by a
9 fine not exceeding two thousand dollars (\$2,000), or by
10 imprisonment in a county jail for a period of not more
11 than one year, or by both. If probation is granted, or the
12 execution or imposition of the sentence is suspended, it
13 shall be a condition thereof that the defendant participate
14 in, for no less than one year, and successfully complete, a
15 batterer's treatment program, as defined in Section
16 1203.097, or if none is available, another appropriate
17 counseling program designated by the court. However,
18 this provision shall not be construed as requiring a city, a
19 county, or a city and county to provide a new program or
20 higher level of service as contemplated by Section 6 of
21 Article XIII B of the California Constitution.

22 (2) *Any person who is convicted of a violation of*
23 *paragraph (1) for acts occurring within seven years of*
24 *two or more prior convictions under paragraph (1), or*
25 *Sections 273.5, 262, 243.4, 244, 244.5, 245, 261, or 264.1, or*
26 *subdivision (c) or (d) of Section 286, or subdivision (c) or*
27 *(d) of Section 288a, if the offense was committed against*
28 *a person described in paragraph (1), shall be punished by*
29 *imprisonment in a county jail for not more than one year*
30 *or by a fine of five thousand dollars (\$5,000), or both that*
31 *fine and imprisonment, or by imprisonment in the state*
32 *prison for 16 months, or two or three years.*

33 (3) Upon conviction of a violation of this subdivision,
34 if probation is granted, the conditions of probation may
35 include, in lieu of a fine, one or both of the following
36 requirements:

37 (A) That the defendant make payments to a battered
38 women's shelter, up to a maximum of five thousand
39 dollars (\$5,000).

(B) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

~~(3)~~

(4) Upon conviction of a violation of this subdivision, if probation is granted or the execution or imposition of the sentence is suspended and the person has been previously convicted of a violation of this subdivision and sentenced under paragraph (1), the person shall be imprisoned for not less than 48 hours in addition to the conditions in paragraph (1). However, the court, upon a showing of good cause, may elect not to impose the mandatory minimum imprisonment as required by this subdivision and may, under these circumstances, grant probation or order the suspension of the execution or imposition of the sentence.

(5) The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence so as to display society's condemnation for these crimes of violence upon victims with whom a close relationship has been formed.

1 (f) As used in this section:

2 (1) “Peace officer” means any person defined in
3 Chapter 4.5 (commencing with Section 830) of Title 3 of
4 Part 2.

5 (2) “Emergency medical technician” means a person
6 who is either an EMT-I, EMT-II, or EMT-P (paramedic),
7 and possesses a valid certificate or license in accordance
8 with the standards of Division 2.5 (commencing with
9 Section 1797) of the Health and Safety Code.

10 (3) “Nurse” means a person who meets the standards
11 of Division 2.5 (commencing with Section 1797) of the
12 Health and Safety Code.

13 (4) “Serious bodily injury” means a serious
14 impairment of physical condition, including, but not
15 limited to, the following: loss of consciousness; concussion;
16 bone fracture; protracted loss or impairment of function
17 of any bodily member or organ; a wound requiring
18 extensive suturing; and serious disfigurement.

19 (5) “Injury” means any physical injury which requires
20 professional medical treatment.

21 (6) “Custodial officer” means any person who has the
22 responsibilities and duties described in Section 831 and
23 who is employed by a law enforcement agency of any city
24 or county or who performs those duties as a volunteer.

25 (7) “Lifeguard” means a person defined in paragraph
26 (5) of subdivision (c) of Section 241.

27 (8) “Traffic officer” means any person employed by a
28 city, county, or city and county, to monitor and enforce
29 state laws and local ordinances relating to parking and the
30 operation of vehicles.

31 (9) “Animal control officer” means any person
32 employed by a city, county, or city and county for
33 purposes of enforcing animal control laws or regulations.

34 (10) “Dating relationship” means frequent, intimate
35 associations primarily characterized by the expectation of
36 affectional or sexual involvement independent of
37 financial considerations.

38 (g) It is the intent of the Legislature by amendments
39 to this section at the 1981–82 and 1983–84 Regular Sessions
40 to abrogate the holdings in cases such as *People v. Corey*,

1 21 Cal. 3d 738, and *Cervantez v. J.C. Penney Co.*, 24 Cal.
2 3d 579, and to reinstate prior judicial interpretations of
3 this section as they relate to criminal sanctions for battery
4 on peace officers who are employed, on a part-time or
5 casual basis, while wearing a police uniform as private
6 security guards or patrolmen and to allow the exercise of
7 peace officer powers concurrently with that
8 employment.

9 SEC. 2. No reimbursement is required by this act
10 pursuant to Section 6 of Article XIII B of the California
11 Constitution because the only costs that may be incurred
12 by a local agency or school district will be incurred
13 because this act creates a new crime or infraction,
14 eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section
16 17556 of the Government Code, or changes the definition
17 of a crime within the meaning of Section 6 of Article
18 XIII B of the California Constitution.

